

**REMARKS**

Claims 13-20 and 22-27 are pending in this application. By this Amendment, claims 13-20 and 22-24 are amended, and claims 1-12 and 21 are cancelled without prejudice to or disclaimer of the subject matter contained therein; and claims 25-27 are added. No new matter is added. Claims 13 and 25-27 are the independent claims.

Applicant appreciates the Examiner's indication that the Information Disclosure Statements filed on September 29, 2006 and December 7, 2006, have been considered.

Applicant respectfully notes that the present action does not indicate that the claim to foreign priority under 35 U.S.C. §119 has been acknowledged or that certified copies of all priority documents have been received by the U.S.P.T.O. Applicants respectfully request that the Examiner's next communication include an indication as to the claim to foreign priority under 35 U.S.C. §119 and an acknowledgement of receipt of the certified copies of all priority documents.

Applicant also respectfully notes that the present action does not indicate that the drawings have been accepted by the Examiner. Applicant respectfully requests that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicant may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

**Election/Restriction Requirement**

Applicant acknowledges the election of Group II, of which claims 13-24 read on, and claims 1-12 have been withdrawn by the Examiner as being directed to a non-elected invention. By this amendment, Applicant has canceled claims 1-12. Accordingly, Applicant respectfully reserves the right to file a divisional application(s) directed to the non-elected invention, *viz.*, claims 1-12.

**Claim Rejections - 35 U.S.C. § 112**

Claims 13-24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicant submits that claims 13-24 have been amended, taking into consideration the Examiner's comments, to obviate the rejections.

Reconsideration and withdrawal of the rejections are respectfully requested.

**Claim Rejections - 35 U.S.C. § 102**

Claims 13 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO 98/28969 ("Oosterling"); claims 13, 15, 16 and 18 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2007/0215053 ("Duke"); and claims 13 and 19-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2005/0072362 ("Innings"). Applicant respectfully traverses this rejection for the reasons discussed below.

Initially, Applicant submits that claim 13 includes the subject matter of claim 21, and thus, Applicant's remarks will be addressed based on the reference of Innings, which was applied by the Examiner to reject claim 21.

In the outstanding Office Action, the rejection is based on an assertion that paragraph [0028] of the Innings reference teaches the “vacuum difference measuring device” and the “control device.”<sup>1</sup> Applicant respectfully disagrees.

In particular, although the Innings reference discloses a vacuum sensor 206 for measuring the vacuum level, the vacuum sensor of Innings is used only for indicating the vacuum level in the teat during rapidly increased milking. *See paragraph [0026].* Accordingly, the Innings reference fails to disclose or suggest of measuring the “vacuum difference between the lower end of the teat cup liner and the space,” as taught by claim 13.

Further, because the Innings reference fails to disclose or suggest a “vacuum difference measuring device,” it cannot teach or suggest, a “control device provided to adjust said vacuum level in said space during milking according to at least said measured vacuum difference,” as recited in amended claim 13. Therefore, contrary to the Examiner’s contention, the Innings reference does not disclose or suggest each and every element of claim 13.

Since the Innings reference fails to disclose each and every element of claim 13, it cannot provide a basis for a rejection under 35 U.S.C. § 102(b) and, thus, is allowable. Claims 14-20 and 22-24 depend from amended claim 13 and, therefore, allowable for the similar reasons discussed above with respect to claim 13.

For at least these reasons, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 13-20 and 22-24 based on the Innings reference.

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<sup>1</sup> See Office Action mailed December 19, 2009, page 6, paragraph 35.

In regard to claim 25, Applicant submits that claim 25 includes the subject matter of claims 13 and 15, in which claim 15 was rejected based on the Duke reference.

Applicant respectfully submits that the Duke reference fails to disclose or suggest, *inter alia*, “said vacuum in said space is dynamically varied during a milking process depending upon a momentary milk flow,” as recited in claim 25.

In the outstanding Office Action, the rejection is based on an assertion that paragraph [0056], lines 20-29 of Duke teaches the features found in originally filed claim 15.<sup>2</sup> Applicant respectfully submits, however, that paragraph [0056] of Duke merely discloses that the vacuum is varied depending on the vacuum level, i.e., when the vacuum becomes too high, the vacuum is reduced. The measured vacuum is not based on “the momentary milk flow.”

Accordingly, Applicant respectfully submits that the Duke reference fails to disclose or suggest, *inter alia*, “said vacuum in said space is dynamically varied during a milking process depending upon a momentary milk flow,” as recited in claim 25.

In regard to claim 26, Applicant submits that claim 26 includes the subject matter of claims 13 and 16, in which claim 16 was rejected based on the Duke reference.

Applicant respectfully submits that the Duke reference fails to disclose or suggest, *inter alia*, “said milking criteria is an expected time to finish milking of a particular udder quarter being milked,” as recited in claim 26.

In the outstanding Office Action, the rejection is based on an assertion that paragraph [0008], lines 9-14 of Duke teaches the features found in originally filed

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<sup>2</sup> See Office Action mailed December 19, 2009, page 5, paragraph 29.

claim 16.<sup>3</sup> Applicant respectfully submits, however, that paragraph [0008] of Duke again merely discloses that the vacuum is varied depending on the vacuum level, i.e., when the vacuum becomes too high, the vacuum is reduced. The measured vacuum is not based on the “expected time to finish milking.”

Accordingly, Applicant respectfully submits that the Duke reference fails to disclose or suggest “said milking criteria is an expected time to finish milking of a particular udder quarter being milked,” as recited in claim 26.

In regard to claim 27, Applicant submits that claim 27 includes the subject matter of claims 13 and 18, in which claim 18 was rejected based on the Duke reference.

Applicant respectfully submits that the Duke reference fails to disclose or suggest, *inter alia*, “said control device is provided to set the vacuum in said space in each teat cup so that all udder quarters finish milking simultaneously,” as recited in claim 27.

Applicant respectfully submits that the Duke reference is completely silent of teaching or suggesting that the vacuum in the space is set so that all udder quarters finish milking simultaneously.

Accordingly, claims 25-27 are believed to be allowable for at least the reasons discussed above. Therefore, Applicant respectfully requests that the rejection be reconsidered and withdrawn.

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<sup>3</sup> See Office Action mailed December 19, 2009, page 6, paragraph 30.

**Claim Rejections - 35 U.S.C. § 103**

Claim 17 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Duke. Applicants respectfully traverse this rejection for the reasons discussed below.

Claim 17 is believed to be allowable for at least the reasons set forth above regarding claim 13. Since claim 17 is patentable at least by virtue of its dependency on independent claim 13, Applicants respectfully request that the rejection of claim 17 under 35 U.S.C. § 103(a) be withdrawn.

**NEW CLAIMS**

New claims 25-27 have been added in an effort to provide further, different protection for Applicant's invention. Claim 25 includes the subject matter of claims 13 and 15; claim 26 includes the subject matter of claims 13 and 16; and claim 27 includes the subject matter of claims 13 and 18. No new matter is added.

New claims 25-27 are allowable at least for the reasons somewhat similar to those given for claim 13 and/or for the further features recited therein.

**CONCLUSION**

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every

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reason for the patentability of the claimed subject matter over the applied prior art. Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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